

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

TYREL L. MAYES,

Plaintiff,

v.

GRADY COUNTY JAIL,

Defendant.

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No. CV-20-1051-R

ORDER

On November 3, 2020, United States Magistrate Judge Suzanne Mitchell issued her second Order instructing Plaintiff Tyrel L. Mayes (“Plaintiff”) to “cure the deficiencies in his [in forma pauperis (“IFP”)] application to include (1) financial information and signature of an authorized officer of the penal institution, and (2) a certified copy of his institutional accounts statement for the six-month period immediately preceding his filing of the action.” Doc. No. 9. Plaintiff failed to comply with that Order. On November 24, 2020, Magistrate Judge Mitchell issued a Report and Recommendation, recommending that the Court “dismiss the action without prejudice” because the Plaintiff failed to “either pay the filing fee or correct the deficiencies in his application for leave to proceed in forma pauperis.” Doc. No. 10, p. 1.

Magistrate Judge Mitchell advised the Plaintiff of his right to object to the Report and Recommendation by December 15, 2020, *id.* p. 2, and further advised that the failure to timely object waives the right to appellate review of the factual and legal issues addressed. *Id.* pp 2-3. Plaintiff failed to make a timely objection.

The Court mailed a copy of the Report and Recommendation to the Plaintiff at the Grady County Jail in Chickasha, Oklahoma, the day it was filed, November 24, 2020. However, according to the Oklahoma Department of Corrections online search feature, the Plaintiff was received by the Lexington Assessment & Reception Center in Cleveland County, Oklahoma, on the same day. Thus, Plaintiff was no longer held at the Grady County Jail when the Court mailed a copy of the Report and Recommendation there.

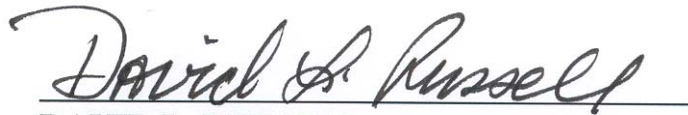
Accordingly, on December 29, 2020, the Court “direct[ed] the Clerk of Court to mail a copy of [the] Order, along with the Report and Recommendation, Doc. No. 10, to Plaintiff where he is currently held at the Lexington Assessment & Reception Center in Cleveland County, Oklahoma.” Doc. No. 11, p. 2. In the Order, the Court advised the Plaintiff of “his right to file an objection to the Report and Recommendation with the Clerk of Court **on or before January 19, 2021.**” *Id.* Plaintiff did not file an objection.

On January 7, 2021, the Court received a postcard from the Plaintiff explaining “he would like to proceed in the process for the 1983.” Doc. No. 12, p. 2. As Magistrate Judge Mitchell explained in the Report and Recommendation, for Plaintiff to proceed, he must have “either pa[id] the filing fee or correct[ed] the deficiencies in his application for leave to proceed in forma pauperis.” Doc. No. 10, p. 1.

After repeated instructions to cure the deficiencies in his application to proceed in forma pauperis, Plaintiff’s deficient application persists. Furthermore, Plaintiff did not file an objection to the Report and Recommendation by January 19, 2021. In its Order dated December 29, 2020, this Court advised Plaintiff that his “failure to make a timely objection waives his right to appellate review of both factual and legal questions...”. Doc. No. 11

(citing Doc. No. 10, p. 3 (citing *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991))). Because Plaintiff failed to cure the deficiencies in his application and failed to timely object, Magistrate Judge Mitchell's Report and Recommendation, Doc. No. 10, is hereby ADOPTED in its ENTIRETY. Therefore, Petitioner's action is DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED on this 28th day of January 2021.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE